

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7883 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ASHRAF @ KALAVO SON OF KARAMATALI KHALIFA

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MS HANSABEN PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 26/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

2. The petitioner herein challenges the order of preventive detention dated 9th September, 1998 made by the Commissioner of Police, Rajkot City under the powers

conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a bootlegger within the meaning of Section 2(b) of the Act. Two offences punishable under the Bombay Prohibition Act are registered against the petitioner and one another. One of the said offences is pending trial and the other is pending investigation. In both the cases, country liquor was seized. Besides, the police has recorded statements of two witnesses who have given statements in respect of petitioner's bootlegging activities and its effect on public tranquillity and even tempo of life. The petitioner is, therefore, held to be a 'bootlegger' within the meaning of Section 2 (b) of the Act, and his activities are held to be prejudicial to the maintenance of public order.

4. It is contended that on 17th September, 1998 one Nasimbanu, the sister of the petitioner had made a representation to the Home Minister and had asked for the Forensic Science Laboratory report in respect of the sample recovered from the petitioner in the offence pending investigation. It is contended that though the said representation has been answered, the demand made therein has not been acceded to. The Forensic Science Laboratory report is a vital document without which the petitioner could not make an effective representation against the impugned order of detention. The petitioner's constitutional right is thus violated and the continued detention of the petitioner is, therefore, illegal and void.

5. The petition is contested by the learned AGP Mrs. Hansaben Punani. She has relied upon the affidavit made by the detaining authority and has submitted that while forming the subjective satisfaction, the detaining authority had not relied upon the FSL report, and therefore, the same was not required to be furnished to the petitioner. In the matter of Ranvirsinh Kalyansinh [Special Civil Application No. 7490 of 1998, decided on 12th July, 1999], I have taken a view that whether the Detaining Authority relies upon it or not, the report of the Forensic Science Laboratory/Chemical Analyst is a vital document, without which the detenu may not be able to make any effective representation. It is, therefore, imperative for the Detaining Authority to furnish a copy of the said report to the detenu except in cases where such reports are not yet received or not prepared. Besides, even after the petitioner's demand vide his

representation dated 17th September, 1998, the said report has not been furnished to the petitioner. The petitioner's right to make an effective representation having thus been infringed, the continued detention of the petitioner is unwarranted.

6. The petition is, therefore, allowed. The impugned order dated 9th September, 1998; Annexure-A to the petition, is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

Prakash*